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IN THE

Supreme Court of the United States

No. 208

A.B.T. MANUFACTURING CORPORATION, *Petitioner*,

v.

NATIONAL RESEARCH, INC., *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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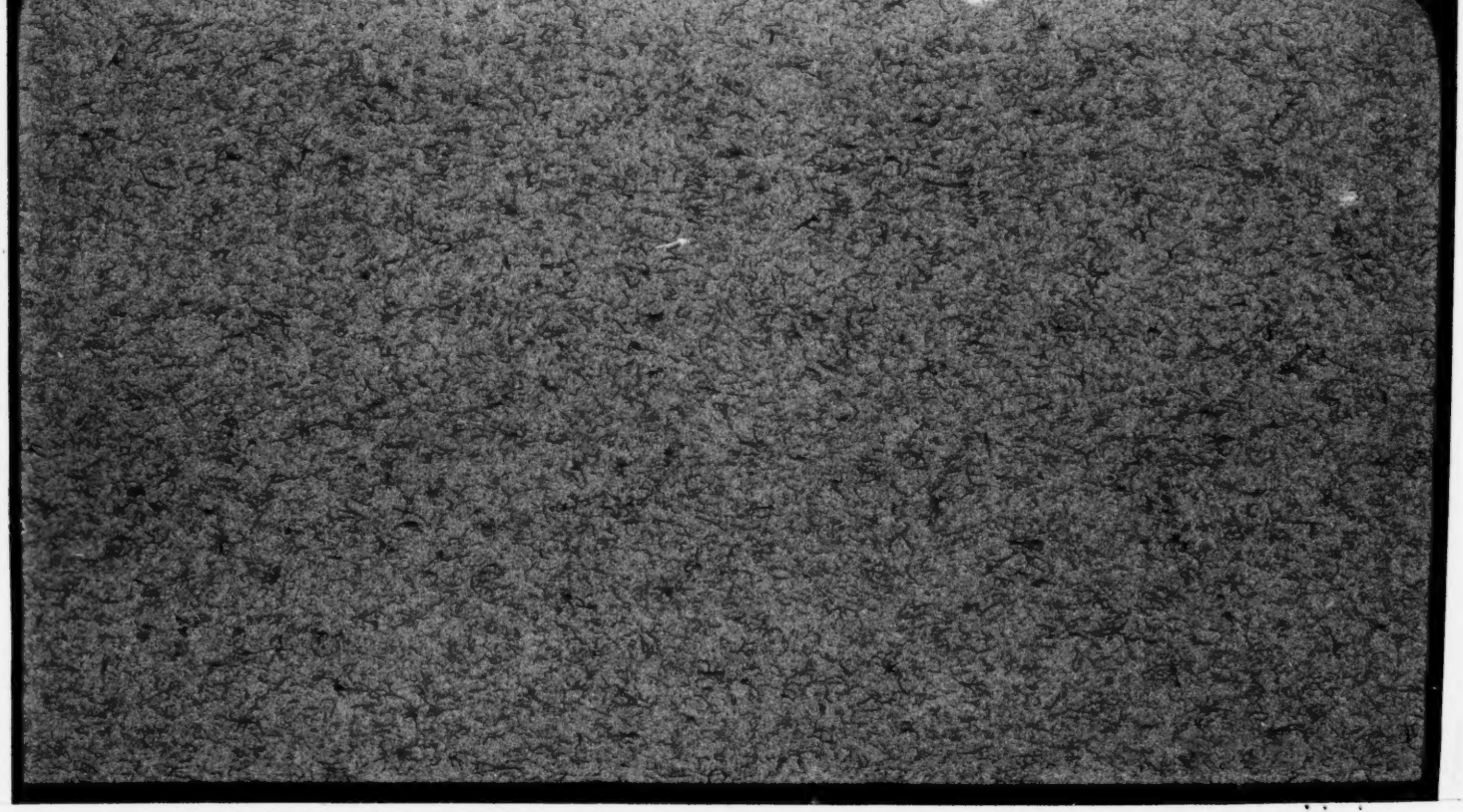

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IN THE

Supreme Court of the United States

No.

A.B.T. Manufacturing Corporation, *Petitioner,*

v.

National Rejectors, Inc., *Respondent.*

PETITION AND SUPPORTING BRIEF FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, A.B.T. Manufacturing Corporation, respectfully prays for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review the judgment entered by that court on May 8, 1951. A petition for rehearing was duly presented and denied without opinion on June 1, 1951 (R., p. 1022).

The petition for writ of certiorari is more particularly directed to a review of the finding of the Circuit Court of

Appeals that petitioner's models, Series 7000A, 7000B and 6500B, infringe claim 21 of the Fry patent No. 2,292,628 in suit.

A certified transcript of the record in this case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the rules of this Court.

The decision of the Circuit Court of Appeals appears in the record at pages 1012-1018.

The special master's report approved by the trial court appears in the record at page 927.

The opinion of the trial court, Honorable John H. Barnes, approving the special master's report appears in the record at page 978, and his final judgment at page 980.

JURISDICTIONAL STATEMENT.

Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (26 U.S.C. § 347), and Section 5(b) of Rule 38 of this Court. The case arises under the patent laws. The judgment, of which review is sought, is dated May 8, 1951, and is final.

INTRODUCTORY STATEMENT.

This Court has not been slow in granting certiorari in a patent case without conflict of decision by Circuit Courts of Appeal where the decision complained of establishes a complete dominant monopoly with the suppression of all competition in a large and growing field of production vital to the public interest and where there is no reasonable likelihood of conflict of decision by Circuit Courts of Appeal.* This definitely is such a case.

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* Without conflict of opinion of Courts of Appeals certiorari to the Seventh Circuit was granted by this Court in *Exhibit Supply Co.* v. *Ace Patents Corporation*, 315 U. S. 126; *Muncie Gear Works* v. *Outboard, Marine & Mfg. Co.*, 315 U. S. 759; *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U. S. 271; and *Crest Specialty Co.* v. *Trager*, 71 S. C. 733. In each case this Court reversed the judgment of the Circuit Court of Appeals either in part or in its entirety. In a similar situation certiorari was granted in *Para-*

Respondent has expressly stated it will grant no license to anyone under the patent in suit. Respondent's witness, Kuechler, testified:

> "Q. Has the plaintiff company granted any license under the Fry patent in suit, No. 2,292,628?
> "A. No.
> "Q. Would the Plaintiff have entertained a request for a license from the Defendant before or about the time that the Defendant started the infringement in this case?
> * * * * *
> "A. No, we would not, because we knew that we could take care of the requirements of the industry." (R., p. 404.)

Respondent concedes and respondent's witnesses have testified that petitioner is its *single* competitor in the manufacture of slug rejectors for the *entire vending machine industry* in this country. Respondent's witness, Kuechler, testified:

> "Q. How many concerns in the United States make a coin rejector, which will reject a coin of proper diameter but under weight?
> * * * * *
> "A. Two.
> * * * * *
> "Q. Will you name the two, please?
> "A. National Slug Rejectors, Inc., and A.B.T. Manufacturing Company.
> "Q. That is the plaintiff and defendant in this case?
> "A. Yes." * (R., p. 187.)

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mount Publix Corp. v. *American Tri-Ergon Corp.*, 294 U. S. 464; *Altoona Publix Theatres, Inc.* v. *American Tri-Ergon Corp.*, 294 U. S. 477; *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U. S. 47; *Halliburton Oil Well Cementing Co.* v. *Walker*, 329 U. S. 1; *Faulkner* v. *Gibbs*, 338 U. S. 267; and *Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Corp.*, 340 U. S. 147.

* In its brief in the Court of Appeals in this suit (p. 45) respondent's counsel stated: "The plaintiff and defendant were the only two sources of this rejector, and if the defendant had not been in

Unless the decision of the Court of Appeals finding that petitioner's models, 7000A, 7000B and 6500B, infringe is reversed, respondent will have a complete monopoly in the entire vending machine industry with no reasonable likelihood of any conflict of decision of Circuit Courts of Appeals on the important and vital infringement question presented by this petition. Here there is more than a substantial concentration of industry in one circuit. Respondent has complete dominance of an entire and extensive industry with no possibility of conflict of decision in respect to the scope of the claim in suit to be reviewed and resolved by this Court.*

The special master who saw and heard the expert witnesses testify found as a matter of *fact* petitioner's models, 7000A, 7000B, and 6500B, *averted infringement* (R., pp. 911-2, 918). The District Court *affirmed* this finding of fact. In its judgment these models were decreed to avoid infringement of the claim of the patent in suit (R., p. 982).

These concurring *findings of fact* of the special master and the District Court *were reversed* by the Court of Appeals even though supported by substantial and convincing evidence.** It improperly interpolated into claim 21 an

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the field, plaintiff was the only other source for this rejector which the trade demanded."

In respondent's response to petitioner's motion for stay of mandate, filed June 4, 1950 (p. 3), it again stated: "Other than the plaintiff, the defendant is the only manufacturer of rejectors of the type here involved. The plaintiff is capable of supplying the entire demand for such type rejectors."

* Such a situation has frequently moved this Court to grant certiorari (*Paramount Publix Corp.* v. *American Tri-Ergon Corp.; Altoona Publix Theatres, Inc.* v. *American Tri-Ergon Corp.; Schriber-Schroth Co.* v. *Cleveland Trust Co.; Exhibit Supply Co.* v. *Ace Patents Corp.; Muncie Gear Works* v. *Outboard, Marine & Mfg. Co., supra.*

** In so doing the Court of Appeals disregarded the rule announced by this Court in *Graver Tank & Mfg. Co.* v. *Linde Air Products Co., supra.*

Fig. 1.

(Similar to Fig. 15 of Patent in Suit)

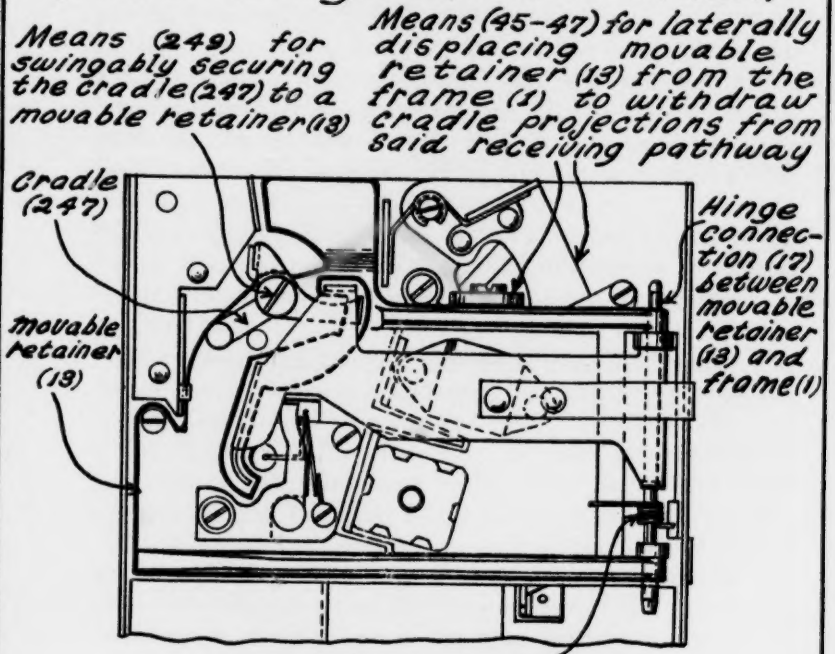
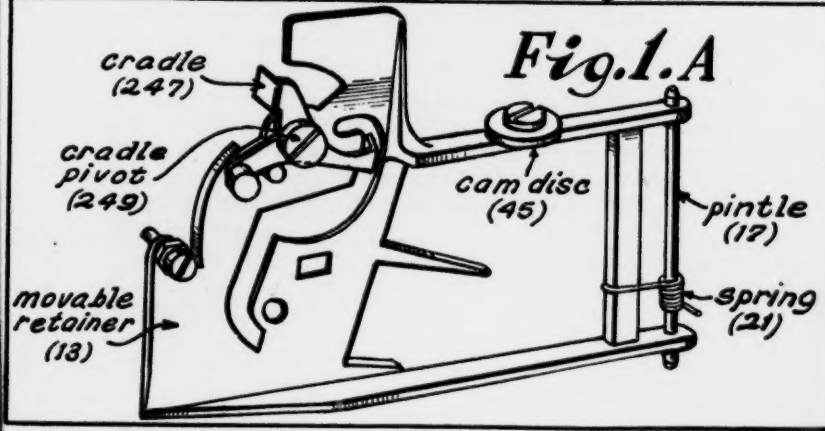

Means (249) for swingably securing the cradle (247) to a movable retainer (13)
Means (45-47) for laterally displacing movable retainer (13) from the frame (1) to withdraw cradle projections from said receiving pathway
Cradle (247)
Movable retainer (13)
Hinge connection (17) between movable retainer (13) and frame (1)
Spring (21) for yieldably positioning the movable retainer (13) to the said frame (1) adjacent to said receiving pathway

Fig. 1.A



element disclosed by the drawings *but unrecited* in the claim. It also distorted the claim by deleting therefrom certain positively recited material elements or parts for which there are no counterparts or equivalent in the accused devices. It resorted to a patent claim interpretation in conflict with many decisions of this Court.

The conflict of the concurring report of the special master and the judgment of the trial court and the reversing decision of the Circuit Court of Appeals potently establishes that infringement is averted when the claim in suit is lawfully construed.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

1. Respondent sued petitioner in September 1945 for infringement of claim 21 of patent 2,292,628 (R., p. 1025) relating to a coin selector for rejecting coins of proper diameter but under weight in a vending machine. The essential feature of the claimed combination is a *cradle swingably* secured to a *movable retainer yieldably* positioned to the frame of the selector adjacent a coin-receiving pathway and adapted to be *laterally* displaced to *withdraw the projections of the cradle from such pathway* so that an intercepted coin of proper diameter but under weight may be scavenged through the coin rejection pathway. Figures 1 and 1-A appearing opposite illustrate the claimed combination.

2. The trial court on July 5, 1946, held claim 21 to be invalid, but if valid to be infringed by petitioner's models 6006, 6010 and 6025.

3. Plaintiff appealed. The Circuit Court of Appeals affirmed the finding of infringement and reversed the holding of validity of claim 21 [164 F. (2d) 333] and ordered an injunction and accounting. In sustaining validity the Court of Appeals found the patent to be directed to a slight improvement in a crowded art and *entitled to a narrow*

construction. It follows that the patent is entitled to but a narrow range of equivalents under many decisions of this Court.

The Court of Appeals in its original opinion (p. 339) sustaining the validity of the narrow claim *inter alia* italicized the words of that part of the claim setting forth the feature of the cradle "swingably secured" to a "movable retainer" and pointed out that such "italicized words of the claim allegedly distinguish the patent and plaintiff's device from the prior art".

4. On October 28, 1948, after the matter of accounting had been referred to the master pursuant to the judgment for injunction and accounting respondent filed a petition (R., p. 859) requesting, *inter alia,* that petitioner's current models, 7000A, 7000B and 6500B, slug rejectors, be included in the accounting. Respondent's petition and petitioner's answer in respect to these models were then referred to the special master (R., p. 871).

On January 24, 1949, the master filed his special report (R., p. 897) and concluded petitioner's enjoined models, among certain others, did infringe but that petitioner's current models, 7000A, 7000B and 6500B, *did not infringe the patent in suit.* The master held:

> "Claim 21 of plaintiff's patent is a combination claim. The patentee has no patent on anything less than the entire combination (*Clapp* v. *Stewart Warner,* 116 F. 2d 68, 72). If an inventor describes a part as an essential feature of his invention and makes it an element of his claim, he is in no position to say that the part is immaterial and that a device, which lacks it, is an infringement, though such device accomplishes the same result (*Wright* v. *Yuengling,* 155 U. S. 47, 52). There must be similarity of elements, which perform the same function, before infringement is shown (*Jogger Mfg. Co.* v. *Roquemore,* 118 F. 2d 867, 870). Identity of result is not enough; there must be identity of means to constitute infringement (*Fairbanks Morse Co.* v. *American Valve & Meter Co.,* 31 F. 2d 103, 105). * * * " (R., p. 911.)

Concluding the master stated:

> "It would appear, therefore, that Models 7000A, 7000B and 6500B involve changes amounting to more than a mere reversal of the parts and functions found in claim 21, in the patented device and in the 6000, 6500 and 7000 models of the defendant. In my opinion, these Models 7000A, 7000B and 6500B do not infringe plaintiff's patent, and by their manufacture and sale, defendant did not violate the injunction issued in this cause.
>
> • • • • •
>
> "15. Said Models 7000A, 7000B and 6500B *do not include all of the elements* set out in claim 21 of plaintiff's patent, No. 2,292,628." (R., pp. 912 and 918.)

5. Objections to the master's report were filed by each party (R., pp. 972-3). These objections were overruled by the trial court. He approved all the findings of the master including the latter's holding that current models 7000A, 7000B and 6500B *did not infringe* claim 21 of the patent.

6. The final judgment of the trial court was entered on September 25, 1950 (R., p. 980). In the judgment the District Court decreed:

> "8. The defendant's accused devices, Models 7000A, 7000B and 6500B (exemplified by plaintiff's exhibits 46, 47, and 48, respectively) *do not* infringe claim 21 of said Patent No. 2,292,628." (R., p. 982.)

7. Both parties appealed from the judgment. Defendant appealed from the judgment awarding plaintiff $114,455.91 as damages for the manufacture and sale of the rejectors held to infringe and plaintiff from the part of the judgment holding that the current rejector models, 7000A, 7000B and 6500B, did not infringe said claim 21.

8. On May 8, 1951, the Court of Appeals affirmed the judgment below in respect to the award of damages. It reversed the *concurrent findings* of the special master and the trial court that petitioner's current models, 7000A, 7000B and 6500B did not infringe the claim in suit. By

reading into the claim a finger or a stripping finger 268 disclosed in the drawings of the patent but unrecited in the claim and by *reading out* of the claim the positively recited elements of a cradle swingably secured to a movable retainer positioned to a frame as well as the essential feature as expressed in the claim of lateral movement of the cradle to withdraw the cradle projections from the pathway, all in conflict with many decisions of this Court relevant to claim interpretation, the Court of Appeals improperly found infringement.

The Circuit Court of Appeals improperly accorded the patent a broad and wide range of equivalents notwithstanding the original opinion of the same court which characterized the patent as "not an outstanding one" and entitled to "but a narrow construction" [164 F. (2d) at p. 340] and in conflict with the settled rule of law that a narrow range of equivalents must be accorded to a secondary or improvement patent in a crowded art. There are no counterparts or equivalent in the accused models, 7000A, 7000B and 6500B, for the alleged vitalizing features and elements of the claim as italicized in the original opinion of the Court of Appeals, nor are such vital features present in the accused models, 6000A, 7000 and 6500.

QUESTIONS PRESENTED.

The decision of the Court of Appeals for the Seventh Circuit in this case presents the following questions:

1. Is the decision of the Circuit Court of Appeals interpolating in claim 21 a finger or stripping finger 268 disclosed in the drawings of the patent but unrecited in the claim to establish infringement by the manufacture and sale of petitioner's models, 7000A, 7000B and 6500B, in conflict with opinions of this Court?

2. To establish infringement was the Court of Appeals justified as a matter of law in ignoring, deleting or extinguishing from the claim positively recited elements and

limitations for which there are no counterparts or equivalent in petitioner's accused models, 7000A, 7000B and 6500B?

3. Where a patent claim depends for its novelty over the prior art upon certain specific features of construction, can the claim be expanded by the doctrine of equivalents to cover devices lacking such vitalizing or essential features?

REASONS RELIED UPON FOR GRANTING THIS PETITION.

Exercise of the discretionary power of this Court to grant the writ of certiorari prayed for is asked upon grounds as follow.

1. Respondent has conceded and respondent's witnesses have testified that it will not grant a license to anyone under the patent in suit. It is conceded that petitioner is respondent's sole competitor in the manufacture and sale of slug rejectors for the entire vending machine industry in this country.

Respondent's monopoly in the vending machine industry now is dominant and complete and without any competition. It will remain so throughout the life of the patent unless the opinion of the Circuit Court of Appeals be reviewed and reversed.

There is no reasonable likelihood of litigation in any other circuit that might result in conflict of decision. Respondent with its complete monopoly may impose any tax of its choosing, no matter how burdensome, upon the entire vending machine industry. The complete concentration of the monopoly under these circumstances should move this Court to grant this petition where the error in the opinion should seem obvious to all concerned.

2. The decision of the Court of Appeals reversing the concurring findings of fact of the special master and the trial court and in finding petitioner's current models to infringe by interpolating into the claim a complete element

lifted from the drawings and specification but not recited in the claim is untenable and in conflict with the decisions of this and other courts. It is apparent that the decision of the Court of Appeals in this regard is unsound and if permitted to stand will impose undue hardship upon the public and create confusion in patent jurisprudence.

3. The Court of Appeals, particularly in finding petitioner's current models infringed, did ignore or read out of the claims certain positively recited vitalizing elements or limitations for which there are no counterparts or the equivalent in the accused devices, which claim interpretation is directly in conflict with many decisions of this Court.

4. The Court of Appeals violated the accepted rule of this Court that a specific improvement invention vitalized by certain alleged features of novelty in a crowded well-developed art is entitled to but a narrow construction and the doctrine of equivalents cannot be invoked to cover devices lacking such alleged vitalizing or novel features of the invention.

5. Under Rule 52(a) of the Federal Rules of Civil Procedure the concurring findings of fact of the master and the District Court that petitioner's current models averted infringement are supported by credible and substantial evidence and should not have been disturbed by the Court of Appeals. The evidence was not only substantial but was convincing and conclusive.

6. The conflict of decision between the special master who saw and heard the expert witnesses testifying on the fact question of infringement and the judgment of the trial judge affirming the master's decision on one hand and the decision of the Court of Appeals reversing the findings below on the other in and of itself is sufficient to demonstrate that infringement is averted.

7. Where respondent's monopoly in the entire vending machine industry is concededly dominant and complete and

where no conflict of decision in other circuits is likely to hereafter occur, it is to the paramount interests of the public that this Court now resolve the direct conflict of decision of the master and the trial court and the decision of the Court of Appeals.

PRAYER.

WHEREFORE, your petitioner prays that this writ of certiorari to the Court of Appeals for the Seventh Circuit should be granted.

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No.

A.B.T. MANUFACTURING CORPORATION, *Petitioner*,

v.

NATIONAL REJECTORS, INC., *Respondent*.

BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This petition is brought to review more particularly such parts of the decision of the Court of Appeals for the Seventh Circuit reversing the decision of the special master and the trial court and finding petitioner's current models, 7000A, 7000B, and 6500B, infringe claim 21 of the Fry patent 2,292,628.

Prefatory to a discussion of the errors relied upon in support of the petition brief reference will be made to the monopolistic effect of the decision of the Court of Appeals on the entire vending machine industry.

Respondent will have a complete monopoly over the entire vending machine industry unless the decision of the Court of Appeals is reversed. It will dominate this extensive industry and be in a position to impose any tax, no matter how oppressive and burdensome, upon the industry which

necessarily will be passed on to the public throughout the life of the patent in suit.

Respondent has stated no license will be granted under the Fry patent (R., p. 404). It has further stated that no license will in the future be granted under the patent because respondent can satisfy the demands of the entire industry (Petition, *supra*, p. 3).

It is conceded that petitioner and respondent are now the only two sources of supply of coin rejectors to the entire vending machine industry (R., p. 187). Unless the decision of the Court of Appeals be reversed, no competitor would prior to the expiration of the Fry patent engage in the manufacture and sale of coin rejectors for vending machines. No competitor would invite the hazards of litigation based upon this patent fortified by the present decision of the Court of Appeals. No litigation is likely to follow that will result in conflict of decision to be resolved by this Court.

The finding of infringement by the Court of Appeals is untenable, in conflict with and antagonistic to many decisions of this Court here relied upon. Even when viewed most favorably in respondent's favor infringement by petitioner of this narrow improvement patent in a well-developed art is extremely doubtful and highly improbable. Clearly, therefore, in view of the complete monopoly enjoyed by respondent this petition should be governed by the rule announced by this Court in *Schriber-Schroth Co.* v. *Cleveland Trust Co.; Muncie Gear Works* v. *Outboard, Marine & Mfg. Co.;* and *Exhibit Supply Co.* v. *Ace Patents Corporation, supra* (Petition, p. 4).

Unless the decision of the Court of Appeals reversing the opinion of the master and the concurring judgment of the District Court be in turn reversed, respondent will be permitted to shackle the entire vending machine industry until August 11, 1959, the date of expiration of the Fry patent, and impose upon it any oppressive or burdensome tax it may choose. It is respectfully submitted that these

extraordinary circumstances are adequate to move this Court to grant certiorari in the absence of conflict of decision of Courts of Appeals.

STATEMENT OF CASE.

To avoid unnecessary repetition reference is hereby made to the summary and short statement of the matter involved appearing at pp. 5-8, *supra,* of the petition for writ of certiorari.

SPECIFICATION OF ERRORS.

If the writ is granted petitioner will urge that the Court of Appeals erred in the following respects:

1. In holding that petitioner's models, 7000A, 7000B and 6500B, infringe claim 21 of the Fry patent in suit.

2. In giving claim 21 an unwarranted and unlawful interpretation by bodily interpolating into the claim the finger or stripping finger 268 illustrated in the drawings and described in the specification of the patent but not recited as an element of the claim.

3. In deleting from the combination claim express, material and vitalizing limitations for which there are no counterparts or equivalent in said accused devices.

4. In according to the Fry patent, found to be directed to a detailed specific improvement invention in a well developed art, a broad or sweeping range of equivalents.

5. In reversing the fact finding of non-infringement of such models by the master and the trial judge, fully supported by substantial expert testimony, as being clearly erroneous.

ARGUMENT.

POINT I.

IS THE DECISION OF THE CIRCUIT COURT OF APPEALS INTERPOLATING IN CLAIM 21 A FINGER OR STRIPPING FINGER 268 DISCLOSED IN THE DRAWINGS OF THE PATENT BUT UNRECITED IN THE CLAIM TO ESTABLISH INFRINGEMENT BY THE MANUFACTURE AND SALE OF PETITIONER'S MODELS, 7000A, 7000B AND 6500B, IN CONFLICT WITH OPINIONS OF THIS COURT?

A cut disclosing models 7000A, 7000B and 6500B with suitable descriptive legends faces this page. A characteristic and underlying feature of each model is a *fixed cradle* mounted on a fixed pivot and *laterally immovable* in respect to the coin receiving pathway. The cradle is not and cannot be yieldably or otherwise urged into the pathway. It is fixed therein. It is not *swingably secured* to a *laterally movable member* or to any part or element of the rejector.

In said models the cradle with its projections is not and cannot be *withdrawn* from coin supporting position by the actuation of a lever. In these models the trapped coin held by the *laterally immovable* cradle is ejected into the rejection pathway by the laterally movable finger, an essential of these devices and for which there is no counterpart in the claim.

Claim 21 with its essential elements or features as italicized by the Court of Appeals in its original opinion [164 F. (2d) 333] appears in the footnote.* The Court of Ap-

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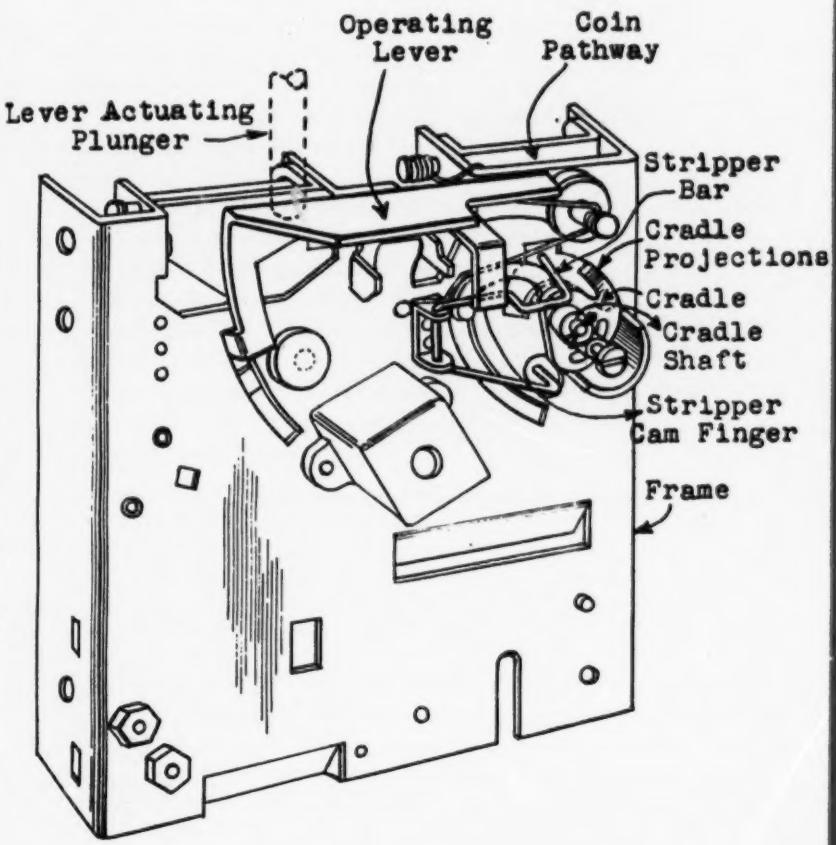
* "The combination in a coin selecting apparatus *of the character described for separating undersized coins* from coins having predetermined acceptable diameters of a frame having a coin receiving pathway, *a connecting coin rejection pathway,* a connecting coin acceptance pathway, a pivotally mounted member *having a pair of integral spaced projections normally extending into said coin receiving pathway, means adapted to yieldably urge said projections into a normal position, said member swingably secured to a moveable retainer, said retainer yieldably positioned to the said*


Operating Lever
Coin Pathway
Lever Actuating Plunger
Stripper Bar
Cradle Projections
Cradle
Cradle Shaft
Stripper Cam Finger
Frame

peals in its original opinion at page 339 did italicize the words of the claim setting forth the feature of the cradle "swingably secured" to a "movable retainer" and did state that such "italicized words of the claim allegedly distinguish the patent and plaintiff's device from the prior art". The accused current models manifestly do not contain such parts or the equivalent, nor additional elements also italicized in the claim.

The claim *does not* directly or inferentially recite the stripping finger 268 or its function as disclosed in the drawings and described in the specification. Such a stripping finger or equivalent is an essential of the current models. Without it the structures would be inoperative for the rejection of spurious coins or slugs.

To support the finding of infringement and in reversing the concurrent findings below the Court of Appeals did definitely *interpolate into claim 21* as an element thereof the stripping finger 268 disclosed in the drawings of the Fry patent. In its erroneous application of the claim to the accused models it said:

> "* * * In the later models defendant has so arranged the parts as to move laterally, during the operation of rejection of the under-weighted coin, *the arm or finger of Claim 21* instead of the cradle projections * * *. In other words, *the stripping finger* is moved instead of the cradle, which remains fixed. * * *" (Italics ours.)

Beyond peradventure of doubt the Court of Appeals did here read the stripping finger and its function into the claim

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frame adjacent to said receiving pathway and adapted to be laterally displaced from said frame to withdraw said projections from said receiving pathway, said pair of projections spaced in relation to encounter the edge of a coin of acceptable diameter propelled by gravity in said receiving pathway to swing said member to divert said coin into said acceptance pathway, *said projections arranged to by-pass therebetween a coin propelled by gravity in said receiving pathway* having a diameter less than a coin of acceptable diameter, to separate undersized coins from coins having acceptable diameters and *to scavenge said pathways.*"

to provide foundation for infringement under the doctrine of transposition of parts.

The Court of Appeals did rewrite claim 21 to include the stripping finger as a positive element thereof in direct conflict with the credible competent expert testimony found in this record. Petitioner's witness, Livingston, testified:

> "Q. Basing your answer upon your understanding of the device of Claim 21, and of the device shown and described in the Fry patent in suit, does Claim 21 define the device as including, as a part of that combination, a stripper element for stripping the coin from the cradle projections?
>
> "A. No, there is no stripping means described at all or set forth at all in Claim 21.
>
> "Q. In your opinion, a stripper is not a part of the combination as defined by Claim 21, is that right?
>
> "A. Positively not.
>
> * * * * *
>
> "By Mr. Threedy: In view of Mr. Loftus's statement, I would like to ask the witness this one question:
>
> "By Mr. Threedy: Q. Does Claim 21 include a stripper or an element which was mentioned during your cross-examination, which was used in lieu of the word 'stripper'? I am speaking of Claim 21.
>
> "A. No, it does not. The only questions propounded to me, according to my recollection of my cross-examination, in connection with a stripper, were in connection with the finger 268, which is part of the stripper.
>
> "Q. Does Claim 21 include as a part of the combination there defined, a finger 268?
>
> "A. No, it does not."

Petitioner's expert witness Snow also testified:

> "Q. Basing your answer upon your understanding of the device of Claim 21, is there included in the combination defined by that claim a stripper or a stripper finger for dislodging the coin from the cradle projections?
>
> "A. Definitely not. Claim 21 does not contain any such element."

This testimony has never been contradicted. It is conclusive evidence supporting the findings of non-infringement of the master and the District Judge and rejecting the finding of infringement by the Court of Appeals. It should be clear to anyone that the findings of the master and the District Court are not clearly erroneous.

The opinion of the Court of Appeals reforming the claim by reading therein as an essential element the stripping finger 268 is in direct conflict with many decisions of this Court. In *McCarty* v. *Lehigh Valley Railroad Co.*, 160 U. S. 110 at 116, this Court said:

> "The difficulty is that if we once begin to include elements not mentioned in the claim in order to limit such claim * * *, we shall never know where to stop."

This salutary rule was also announced by this Court in *White* v. *Dunbar*, 119 U. S. 47 at 51, and *Cimiotti Unhairing Co.* v. *American Fur Refining Co.*, 198 U. S. 399 at 410.

The fact that petitioner's current models may produce the same ultimate result as the device disclosed in the Fry patent cannot justify the rewriting of the claim by the Court of Appeals to include therein an unrecited element to establish infringement (*Keystone Bridge Co.* v. *Phoenix Iron Co.*, 95 U. S. 274; *White* v. *Dunbar, supra; McCarty* v. *Lehigh Valley Railroad Co., supra*). Infringement can be sustained only where the accused devices respond in function and means or equivalent to the claim in suit (*Sanitary Refrigerator Co.* v. *Winters*, 280 U. S. 30). This Court has repeatedly stated that the claim as drawn measures the invention (*Paper Bag Patent Case*, 210 U. S. 405; *Smith* v. *Snow*, 294 U. S. 1).

POINT II.

TO ESTABLISH INFRINGEMENT WAS THE COURT OF APPEALS JUSTIFIED AS A MATTER OF LAW IN IGNORING, DELETING OR EXTINGUISHING FROM THE CLAIM POSITIVELY RECITED ELEMENTS AND LIMITATIONS FOR WHICH THERE ARE NO COUNTERPARTS OR EQUIVALENT IN PETITIONER'S ACCUSED MODELS, 7000A, 7000B AND 6500B?

Characteristic features of the current models have been set forth (*supra*, p. 16). Briefly summarized the stripper bar of the accused devices does not hold the trapped coin on the cradle projections, the function of the finger 268 of the patent in suit when the cradle projections are withdrawn from the coin receiving pathway.

In the accused models the cradle is *laterally immovable.* It is not and cannot be withdrawn from the coin passageway.

The cradle is not *swingably secured* to a *movable retainer* and *moved laterally thereby from the passageway.*

The claim contains other definite positively recited elements not found in the accused devices. It calls for "means adapted to yieldably urge said projections [on the cradle] into a normal position". This material element or its equivalent is missing in the accused devices.

The claim further recites that "said member [the cradle is] *swingably secured* to a movable retainer". The cradle in accused models, 7000A, 7000B and 6500B, is not *swingably* secured to any element or device. The same distinction equally applies to accused models 6000A, 7000 and 6500.

An additional material limitation in the claim is that the retainer be "yieldably positioned to the frame adjacent to the receiving pathway and adapted to be laterally displaced from said frame". In the accused current models the *cradle is fixed* in the pathway. It is immovable laterally. It is not *yieldably* positioned to the frame adjacent the pathway.

The limitations here outlined were all italicized in the original opinion of the Court of Appeals and represent the limitations that patentably distinguished the claim from the prior art.

Notwithstanding this, the Court of Appeals in reversing the concurring decisions of the master and the trial court ignored or deleted from the claim these vitalizing positively recited elements and their functions. Such interpretation of the claim is antagonistic to the established rule of this Court that where a part is included as an element of a combination claim, it is material and cannot be ignored. The rule is that infringement of a combination claim cannot be sustained unless the accused devices embody each element thereof or equivalent (*Cimiotti Unhairing Co.* v. *American Fur Refining Co., supra; Union Water-Meter Co.* v. *Desper*, 101 U. S. 332; *Wright* v. *Yuengling*, 155 U. S. 47; *McClain* v. *Ortmayer*, 141 U. S. 419.

POINT III.

WHERE A PATENT CLAIM DEPENDS FOR ITS NOVELTY OVER THE PRIOR ART UPON CERTAIN SPECIFIC FEATURES OF CONSTRUCTION, CAN THE CLAIM BE EXPANDED BY THE DOCTRINE OF EQUIVALENTS TO COVER DEVICES LACKING SUCH VITALIZING OR ESSENTIAL FEATURES?

The argument on this point divides itself into two parts to be separately considered:

(A): The Court of Appeals in its original opinion in sustaining the patentability of the claim characterized the patent in this way:

> "The patent may not be an outstanding one; it may be entitled to but a narrow construction. It may in fact be easily avoided. We do not say. * * *"

The substantial and fundamental differences between the current accused devices and the invention of the Fry patent have been recited. It is evident that if infringement at

all could be found, it could only be sustained by giving the claim a broad and sweeping range of equivalents to which nothing but a pioneer patent would be entitled (*Hildreth* v. *Mastoras*, 257 U. S. 27).

As stated, the original opinion found the patent to be directed to a mere improvement or secondary invention in a crowded patented art. Notwithstanding this finding the Court of Appeals in the opinion to which this petition is directed gave the patent the status of a pioneer invention entitled to a broad and sweeping range of equivalents, citing in support of the finding *Hildreth* v. *Mastoras, supra.* That decision and many others of this Court announces the rule that only a *pioneer* patent is entitled to such a broad range of equivalents.

A patent directed to an improvement or secondary invention in a crowded art is entitled to but a narrow range of equivalents (*Kokomo Fence Machine Co.* v. *Kitselman*, 189 U. S. 8; *Cimiotti Unhairing Co.* v. *American Fur Refining Co., supra; Computing Scale Co.* v. *Automatic Scale Co.*, 204 U. S. 609). This rule was ignored by the Court of Appeals.

(B): The finding of equivalency by the Court of Appeals is in direct conflict with another rule laid down by the courts. Respondent in moving the Court of Appeals to reverse the original trial court's judgment of invalidity of claim 21 patentably distinguished from the prior art in this way:

> "The Cahoon device shows a circular disc mounted wholly within a coin passage and does not suggest, teach, show or even hint at a disc mounted on a *swingable* retainer."

In the same brief respondent in reference to the Trippensee prior art patent, No. 953,363, also asserted:

> "It does not show a coin weight testing member ***swingably*** secured to a movable retainer."

This contention brings the claim within the principle frequently announced by the courts that:

> "* * * where a patent depends for its novelty over the prior art upon a single limited feature of construction, the claims cannot be expanded by *any doctrine of equivalents* to cover a device which lacks that single essential feature."
>
> [*Standard Mirror Co.* v. *H. W. Brown, Inc.*, 113 F. (2d) 379 at 380 (C.C.A. 7).]

Cases holding to the same effect are *Liberman* v. *Ruwell*, 170 F. 590 (C.C.A. 3), and *D'Arcy Spring Co.* v. *Marshall Ventilated Mattress Co.*, 259 F. 236 (C.C.A. 6).

Petitioner's accused current devices and for that matter petitioner's models 6000A, 7000 and 6500 do not exhibit a coin testing member "swingably secured to a movable retainer", the asserted novel and vitalizing feature of claim 21. The finding of infringement by the Court of Appeals under the doctrine of equivalents is in direct conflict with the principle of patent law announced in the foregoing decisions.

THE MONOPOLISTIC EFFECT OF THE DECISION OF THE COURT OF APPEALS OVER THE ENTIRE VENDING MACHINE INDUSTRY.

At the expense of some repetition it is reiterated that unless the decision of the Court of Appeals is reversed respondent may monopolize the entire vending machine industry for many years. The extent of its monopoly has been demonstrated (*supra*, pp. 13-15). Respondent may impose any tax of its choosing upon the industry to the prejudice of the interests of the public. There is no likelihood of any conflict of decision of Courts of Appeals in the future.

It is self-evident from the lucid, comprehensive report of the master, affirmed by the District Court, and the credible, undisputed testimony of petitioner's witnesses, that in-

fringement is averted. The supporting evidence on this fact issue carries complete conviction. It should be obvious that neither the report of the master nor the judgment of the trial court is clearly erroneous. These impressive circumstances should be adequate to move this Court to grant certiorari.

CONCLUSION.

Your petitioner prays that its petition be granted and a writ of certiorari be issued and the case reviewed, and that the judgment of the Court of Appeals be reversed in the respects prayed for in this petition.

Respectfully submitted,

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Proof of Service.

It is hereby certified that a copy of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and Brief in Support Thereof has this 26th day of ~~August~~ September, 1951, been sent by regular mail to Mr. Clarence J. Loftus, 135 South LaSalle Street, Chicago 3, Illinois, Attorney for Respondent.

Charles M. Thomas.

FILED
AUG 23 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 208

A.B.T. MANUFACTURING CORPORATION,
Petitioner,

vs.

NATIONAL REJECTORS, INC.,
Respondent.

RESPONDENT'S BRIEF URGING THAT CERTIORARI BE DENIED.

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

OPINIONS BELOW.

The Opinion of the Court of Appeals for the Seventh Circuit (188 F. (2d) 706) appears in the Record at pp. 1012-1018.

The Opinion of the Court of Appeals on the previous appeal herein is reported at 164 F. (2d) 333. Certiorari and rehearing thereon were denied by this Court (333 U. S. 832, 850).

JURISDICTIONAL STATEMENT.

Jurisdiction is sought under Section 1254(1) of Title 28 U. S. C.*

COUNTER-STATEMENT OF MATTERS INVOLVED.

Again respondent is confronted with a petition for certiorari (by new counsel) in the *same litigation* on the *same grounds*. The previous petition was strenuously urged, but denied by this Court in 1948, including a petition for rehearing and a supplemental petition (333 U. S. 832, 850). In denying rehearing, this Court said (333 U. S. 850):

> "* * * Neither the petition for rehearing nor the supplemental petition is based upon a ground which is substantial within the meaning of Rule 33, as amended October 13, 1947."

The former petitions were presented through its counsel, Mr. Threedy, who has actively represented petitioner in this litigation from the outset.

The present petition says not one word about the previous petition for certiorari, although it pretends to give the history of this litigation. Probably the new counsel were not informed of that situation. No one familiar with the complete transcript in this litigation, only a part of which was submitted with the present petition (primarily the accounting record minus the entire testimony concerning infringement as to the subsequent models) could make many of the assertions and contentions in the present petition.

The patent in suit was first held valid and infringed (the device held to infringe was known as Model 6000)

* Petitioner (page 2) invokes jurisdiction under old section 347 of Title 28 U. S. C., which was repealed several years ago.

by the Court of Appeals for the Seventh Circuit on October 17, 1947 (164 F. (2d) 333). After petition for rehearing was there presented and denied, petitioner on January 2, 1948, filed in this Court a petition for certiorari and brief in support thereof.* It there strenuously urged as reasons for granting certiorari (See petition in Case 506, Oct., 1947 Term):

(a) That petitioner and respondent are the only manufacturers of rejectors of the type here involved (p. 3),

(b) That there was no likelihood of obtaining a decision in another Circuit (p. 3),

(c) That the matter was of "great public importance" (p. 9),

(d) That the decision of the Appellate Court was in direct conflict with the decisions of this Court (p. 13), and

(e) That the patent in suit dominated an industry (p. 18);

relying on such cases as *Exhibit Supply Co.* v. *Ace Patents Corporation,* 315 U. S. 126, and others, which are the same points and cases now relied on and again urged by the same petitioner, but through other counsel.

Thus this Court, in this same case, has heretofore denied certiorari on precisely the same grounds now urged by the same petitioner. The petitioner seems quite adept in asserting such grounds.*

---

* That petition was No. 506, October Term, 1947. The printed transcript of the litigation up to that time was lodged in this Court in connection with that petition, designated hereinafter as F.C.R., meaning first certiorari record, and of which this Court can take judicial notice.

* In another case between the same parties, where petitioner was a licensee under respondent's patent relating to a wiper arrangement for rejectors (*National Rejectors Inc.* v. *A.B.T. Manufacturing Corp.*, 184 F. (2d) 612), petitioner, in seeking certiorari, urged that the question was of "far-reaching effect", "of paramount importance to every member of the public dealing with patents", and last but not least, that the patent "dominates an entire industry". See Petition (pp. 12-13) No. 417, Oct., 1950 Term, in this Court. Certiorari was denied (340 U. S. 912).

There is no question raised or attempted to be raised by petitioner as to (1) validity of the patent, (2) infringement by the 6000 Series, held to infringe in the first opinion, and *conceded* by petitioner to infringe (164 F. (2d) 335), (3) any rulings on the accounting, or (4) petitioner's contempt of court.

The only question raised here is whether the Court of Appeals is in error on an ordinary question of infringement of personal interest only to the parties here, as to whether the subsequent Models 7000A, 7000B and 6500B are substantially the same as the 6000 Series, held and *conceded* to be infringements. The Court of Appeals, after comparison, held that they were substantially the same; and that infringement could not be evaded in the subsequent models by merely transposing the motion of cooperating parts, which cooperate to dislodge the intercepted *underweight* coin from the cradle projections during the rejection operation.

The patented device here involved is a spurious coin or token rejector. It successfully solved the long existing problem of rejecting spurious coins or tokens of proper diameter but *underweight*, with no clogging possible. It was highly desirable and important in commercial field service (F.C.R. 16, 17, 26, 27, 83, 87, 219, 237, 254).

There are various kinds and types of coin selectors and rejectors, but respondent's patented device is different. It embodies the combination of various elements for preventing cheating by using a coin of proper diameter but *underweight* (164 F. (2d) 333).

Respondent does not make vending machines, but rejectors, used as attachments for such machines. The rejector is a small device. As commercially sold by petitioner and respondent, it can be held in the hand, as will appear from the commercial samples in evidence as exhibits.

After denial of certiorari in the present litigation, the case proceeded on the accounting. It developed that petitioner had later in succession, put out so-called modified models, all of which were mere evasions, and all held to infringe by the Court of Appeals.

The first series, depicted by Models 6000A Series, 7000 Series and 6500, were held to infringe by the Master. Later, defendant resorted to still other studied evasions depicted by defendant's Models 7000A, 7000B and 6500B. During the accounting period, the defendant was also charged with contempt of court and found guilty by the Master, the District Court and the Court of Appeals, primarily because it was offering for sale the models specifically enjoined, and shipping models with slight unimportant detail changes, "evading in no way the infringing operation" (188 F. (2d) 710).

The Master held (R. 916-917)* that each of defendant's Models 6005A, 6010A, 6025A, 7005, 7010, 7025 and 6500 infringed. The District Court adopted and approved such holding (R. 981). The Master, however, held that the evasion depicted by defendant's Models 7000A, 7000B and 6500B did not infringe because the intercepted underweight coin, *during the rejection operation,* is not dislodged from the cradle projections by lateral movement of the cradle, but by lateral movement of the cooperating part of the frame adjacent, designated as 268 in the patent. The Master obviously applied the wrong rule of law, both as to equivalents and transposition of motion. The question of whether these models infringed was primarily one of law. *There was no dispute as to facts.* The Court of Appeals held these evasions to infringe.

Respondent introduced its rejector, embodying the invention in suit to the trade in 1940. Afterwards, it was

* R. refers to the printed transcript filed with the present petition.

suggested to the chief engineer of petitioner by one of his associates that petitioner should scrap its previous rejectors and follow respondent. Petitioner obtained samples of respondent's patented rejectors and constructed its first model *by actually using parts taken from respondent's* (F.C.R. 51-54). Petitioner later put its first infringing model on the market sometime subsequent to March 1945 (F.C.R. 269, 271), and thereafter took out a patent (F.C.R. 514), swearing under oath that its copy amounted to patentable invention over the prior art, and urged that its patentee (Patzer, now its president) was the prior inventor of the invention in suit, over respondent's patentee Fry. By far the greater part of the trial and most of the evidence received related to that contention. After the District Court found against defendant on that contention, and after arguing at length in its printed brief in the Court of Appeals that Patzer was prior to Fry, it was not until the oral argument in the Court of Appeals that defendant for the first time conceded that Fry was the first inventor (164 F. (2d) 333, at 338).

Respondent in this litigation offered evidence to show and contended, in the Court of Appeals, that there are other selectors available for rejecting *underweight* coins, such as the ones made by the Rowe Manufacturing Company, of New Jersey, the DuGrenier Company of Massachusetts (F.C.R. 114-117), and another known as the "100", manufactured and sold at St. Louis (Def. Exh. 9, F.C.R. 119). Such matters also appear in the testimony concerning infringement, and other records, such as Def. Exh. 48, not submitted to this Court with the present petition for certiorari.

Thus, under petitioner's contentions in the Court of Appeals, the industry is not confined to the Seventh Circuit, nor does Claim 21 in suit dominate all devices for rejecting coins of proper diameter but *underweight*.

Petitioner, on page 3 of its petition, refers to an answer of respondent's accountant on the accounting, to the effect that *at the time* petitioner first started the infringing acts in this litigation, respondent would not have entertained a request for a license from the petitioner. However, there is no showing that any such request was then or was ever made by petitioner, or that petitioner is now desirous of a license. Since the patent was first held valid and infringed in this litigation, so far as this record shows, the defendant may have been offered a license which it rejected. That the petitioner cannot deny.

The statement, on page 9 of the petition for certiorari, that "Respondent has conceded and respondent's witnesses have testified that it will not grant a license to anyone under the patent in suit" is absolutely without foundation in fact.

Here there is no conflict of decisions of the Circuit Courts of Appeal, or conflict with the decisions of this Court. Under the decision of the Court of Appeals, the respondent does not have or will not have complete monopoly of the entire vending machine industry, nor does it have complete dominance of an entire and extensive industry, or complete dominant monopoly and suppression of all competition in a large and growing field of production vital to the public interest, as asserted by petitioner.

Petitioner does not question the Court of Appeals' opinion as to validity or as to infringement of various models, but merely as to Models 7000A, 7000B and 6500B, and contends that these models were held infringed by "interpolating into the claim a complete element lifted from the drawings and specification but not recited in the claim". That is not so. These models are substantially the same as Model 6000, held to infringe in the first opinion of the Court of Appeals (164 F. (2d) 333) (and there conceded

by petitioner to be an infringement), except that in Models 7000A, 7000B and 6500B, petitioner transposed the motion of cooperating parts with respect to one feature of the combination claim.

In its second opinion, the Court of Appeals (188 F. (2d) 706, at 708) held the subsequent Models 7000A, 7000B and 6500B, brought up on the accounting, to be infringements, as "a mere transposition of motion of cooperating parts of the devices of the patent, *equal to and corresponding with what the patent prescribed*",* and "a mere reversal or transposition of parts used in the patent, but they produce the same functions in substantially the same way, and accomplish the same result as the patent".

The Court said further, at page 709:

> "In this respect, there was no dispute as to the facts in the trial court but merely a question of whether the undisputed features of the structure are beyond the limitations of Claim 21. Decision of this issue entails an interpretation of the claim and a comparison of the admitted structures with its teachings. We think the court erroneously concluded that these rejectors did not infringe."

It is thus clear that the Court of Appeals held that the structures were substantially the same in construction, function and mode of operation as the one depicted in the drawings of the patent in suit, and Model 6000 first held to infringe.

The Court of Appeals did not read any unrecited element into the claim, as contended by petitioner. Petitioner's whole support for that contention is based on a short quotation appearing on page 17 of its brief, lifted from the opinion, separate and apart from the text, in which appear the words "of Claim 21" used merely to identify the construction of the patent in suit. However,

* Emphasis supplied.

it is clear, from the whole text, that the use of those words had reference to the structure and device shown in the patent in suit, for the Court held that "a mere transposition of motion of cooperating parts of the devices of the patent, equal to and corresponding with what the patent prescribed", in the subsequent models, did not evade infringement.

THE QUESTION.

Petitioner's three hypothetical questions (pp. 8-9) cannot be presented as being founded on anything which the Court of Appeals *actually decided, based on the record in this case.**

Petitioner conceded, in the Court of Appeals, that the 6000 Series infringed (164 F. (2d) 335), and has taken no exception as to validity and the rulings of the Master, the District Court or the Court of Appeals that Models Series 6000A, 7000 and 6500 infringe, or any rulings in connection with the accounting.

Therefore, the only possible question left, assuming petitioner is entitled to a certiorari, which it is not, is this:

Does the petitioner, with respect to Models 7000A, 7000B and 6500B, escape infringement where all the features and elements are present and the same result accomplished in substantially the same way as in the 6000 model and the patent in suit, merely because, as to one feature, petitioner transposes motion of one cooperating part to another cooperating part for dislodging the intercepted coin from the cradle projections during the rejection operation.

The Court of Appeals held that it did not escape by so doing. That does not require reading any unrecited element into the claim, nor was that done.

---

* There is no point in granting certiorari to pass on hypothetical questions not actually decided by the Court of Appeals, and not based on the record in this case.

ARGUMENT.

REASONS URGED FOR DENYING CERTIORARI.

1. The same controlling grounds which petitioner now urges (p. 6 of its petition) are the identical grounds strenuously urged in this litigation by this same petitioner in 1948 (Case No. 506, October, 1947 Term), which petition for certiorari was denied. Thus this Court, in this very litigation, has heretofore denied certiorari, based on the same grounds now urged by this same petitioner.

The first decision by the same Court of Appeals (164 F. (2d) 333) held the same patent valid and infringed by petitioner's Model 6000, which model was conceded by petitioner to infringe. It is substantially the same in construction, function, mode of operation and results attained as petitioner's later evasions, Models 7000A, 7000B and 6500B, except in the later models, defendant has so arranged the parts as to move laterally, during the operation of rejection of the underweight coin, the part which corresponds with member 268 of the patent, rather than the cradle, to dislodge the intercepted underweight coin from the cradle projections.

2. Petitioner's three hypothetical questions cannot be presented as being founded on anything which the Court of Appeals actually decided, based on the record in this case.

3. None of the seven "Reasons Relied Upon for Granting This Petition", specified in the petition commencing on page 9, exist in this case or record.

4. The alleged facts set forth in the petition in the main as a reason for granting certiorari and the authorities cited

have no application whatever to the real facts in the present case. The petition flagrantly misrepresents throughout the controlling facts in this case.

5. Petitioner has misinformed this Court as to the real question decided by the Court of Appeals with respect to Models 7000A, 7000B and 6500B being infringements, and also as to its theory and its reason for its decision. The petition fails to present the case accurately and fairly.

6. The case involves (a) no question of public importance, (b) no matter of avoiding conflict on the law, (c) no matter affecting the interests of the nation, (d) no case of importance which it is in the public interest to have decided by this Court, (e) no principles, the application of which are of wide public and governmental interest, (f) no doubtful question of law of such wide application that this Court should consider it, to remove the doubt, (g) no question as to dominating an industry, concentrated or otherwise, nor (h) any angles of price-fixing or antitrust.

It involves only a simple question of personal interest in a straight patent suit, where the Court of Appeals, following the decisions of this and other courts, held that the "mere transposition of motion of cooperating parts of the devices of the patent, equal to and corresponding with what the patent prescribed", in subsequent models did not evade infringement.

7. The petition for certiorari is without foundation, justification or cause, and obviously falls in that class of petitions for certiorari which are characterized as having been filed for delay, for the mandate is meanwhile stayed, causing further delay in litigation started in 1945, in which repeated trials and hearings have been had before the Master, the District Court and the Court of Appeals and in this Court, on petition for certiorari and rehearing thereof, which were denied.

8. Petitioner here contends, as it did before the Court of Appeals, that the finger 268 is not an element of the claim combination, and now asserts that it was read into the claim by the Court of Appeals. If it means that the part of the frame designated 268 is not referred to in the claim, then it is entirely in error. Claim 21 says that the yieldable retainer which carries the cradle positioned adjacent the receiving pathway is adapted to be laterally displaced from the frame.

In the illustrative form shown in the patent drawings, the *only part of the frame* adjacent the cradle side of the receiving pathway from which the yieldable retainer is adapted to be laterally displaced is that part of the frame which remains stationary during the rejection operation. That part is designated 268, and that is the only part of the frame from which the cradle is displaced for dislodging the intercepted underweight coin from the cradle projections. The reason for displacing the cradle with respect to that part of the frame 268 is because, as the specification says, the part 268 holds the coin back while the cradle projections move out, thus dislodging the intercepted coin from the cradle projections so that it can be rejected. Therefore, the part designated 268 is that part of "said frame", mentioned in the claim, from which the cradle is displaced to dislodge the intercepted *underweight* coin from the cradle projections during the rejection operation.

Yeomans, plaintiff's expert, testified (M.R.* 1275) that in the form shown in the patent in suit, the part 268 is "a part of the frame, and constitutes an abutment against which the coin rests at the time when the projections on the cradle are withdrawn and afford lateral relative movement between the coin and the projections on the cradle."

* Testimony before Master sent to Court of Appeals, not printed, and not sent to this Court.

Andres, plaintiff's other expert witness, also testified that the member 268 was a part of the frame (M.R. 862). This proof is not disputed.

9. Petitioner's witnesses admitted that Models 7000A, 7000B and 6500B, Pl. Exh. 46, 47 and 48, respectively, embodied and contained all the elements, characteristics and features of Claim 21 in suit to accomplish the same result, except they did not find that the following language of Claim 21 applies:

> "said member swingably secured to a movable retainer, said retainer yieldably positioned to the said frame adjacent to said receiving pathway and adapted to be laterally displaced from said frame to withdraw said projections from said receiving pathway."

These models do have exactly those features, but instead of a lateral motion of the cradle, there is a lateral motion of the member 268 to displace the intercepted coin from the cradle projections, and permit the coin to drop down the rejection passage. As the Court of Appeals said (188 F. (2d) 708) this is "a mere transposition of motion of cooperating parts of the device of the patent, equal to and corresponding with what the patent prescribed".

10. Petitioner presents a cut or drawing opposite page 16 of its brief, which it says discloses Models 7000A, 7000B and 6500B. The cut does not show the form 6500B, and it is very confusing as to the forms 7000A and 7000B. It does not show the operation of even 7000A and 7000B, or the correct part designated as 268 in the patent, which cooperates during the rejection operation to dislodge the intercepted underweight coin from the cradle projections. This will be perfectly clear, however, upon examination of the physical models, Pl. Exh. 46, 47 and 48. Therefore, this cut, we believe, will be of little, if any, help to this Court in understanding the function of certain parts and

their operation for dislodging the intercepted underweight coin during the rejection operation.

11. Petitioner apparently asserts that the Court of Appeals, in its first opinion, relied on the detail that the cradle was swingably secured to the movable retainer to distinguish plaintiff's device from the prior art (page 17), and that the patent was entitled to but a narrow construction. That is not correct. As a matter of fact, the Court of Appeals, in its first opinion (164 F. (2d) at 340), made it clear that it was not deciding whether the patent was entitled to but a narrow construction or that it could be easily avoided. The Court of Appeals in its opinion italicized various features and elements of the claim, but nowhere throughout the whole opinion did it say that the patented device was distinguished merely because the cradle was actually attached to the movable retainer. After discussing the prior art in detail, the Court of Appeals said (page 340) that the patentee solved the problem of preventing the cheating of rejectors by the use of underweight coins "by using many of the old elements and by adding new elements which in practice successfully blocked the use of an underweight coin of proper size".

12. There is nothing in the prior art or in the file history which limited the claim to the specific detail as to which cooperating part could be laterally moved to dislodge the intercepted underweight coin from the cradle projections. That can be done, as the patent says, by laterally moving the cradle projections, "while the coin is held by finger 268"; or the part which corresponds to 268, which is interposed between the coin and the cradle, can be moved laterally to dislodge the coin from the cradle projections while the cradle remains stationary laterally. That is the evasion defendant made in its subsequent Models, which the Court of Appeals held did not avoid infringement.

13. Petitioner, on page 22 of its brief, attempts to leave the impression that respondent, in its brief before the Court of Appeals on the first appeal, distinguished over the prior art, Cahoon and Trippensee, solely on the ground that they did not show or even hint at a disc mounted on a swingable retainer. An examination of that brief will show there are many grounds on which Cahoon and Trippensee were disposed of. Both were wholly inoperative, and were clogged by an underweighted coin. Both plaintiff's and defendant's witnesses were in complete agreement. One reason they were wholly inoperative was because there was no lateral movement of cooperating features to dislodge the intercepted underweight coin from the intercepting projections so that the coin could be rejected and discharged down through the rejection passage. So far as either of those references might have shown a cradle, it was mounted wholly within the coin passage, and it did not and was not capable of having any lateral movement or anything cooperating therewith having any lateral movement to dislodge the intercepted coin from the intercepting projections. As before stated, there is nothing in the file history or the prior art which shows any arrangement for dislodging an intercepted coin from the cradle projections extending into the pathway either by moving the cradle laterally, or by moving the cooperating part of the frame, such as designated 268 in the patent.

If the writ issues on the showing in this case, that, in effect, means a direct appeal, probably resulting in petitions for writs being thereafter presented for consideration by this Court in every case where infringement is found and held by the Appellate Court, regardless of proper grounds—throwing a further heavy burden on this Court.

CONCLUSION.

In view of the reasons heretofore pointed out, we urge that the petition for certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent.

FILED
SEP 25 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 208.

A.B.T. Manufacturing Corporation, *Petitioner,*

v.

National Rejectors, Inc., *Respondent.*

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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CASES CITED.

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IN THE

Supreme Court of the United States

No. 208.

A.B.T. MANUFACTURING CORPORATION, *Petitioner,*

v.

NATIONAL REJECTORS, INC., *Respondent.*

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

In reply to the principal, inaccurate and misleading contentions advanced by respondent in its brief, and glaring misstatements and distortions of petitioner's arguments, the following is submitted.

1. Concentration of Industry: Respondent's brief (p. 4) asserts there are "various kinds and types of coin selectors and rejectors" in the art. There may be selectors and rejectors disclosed in the patented prior art but this argument artfully conceals the important fact that at the time the judgment was entered there were no selectors or rejectors manufactured and sold in the *commercial field* except devices made by petitioner and respondent.

Realizing the force of petitioner's contention that respondent will enjoy a complete concentration of the entire vending machine industry, unless the fallacious opinion of the Court of Appeals is reversed, respondent in its brief advances the false, deceptive and misleading contention that currently a number of additional manufacturers are making and selling commercially such selectors and rejectors. In its brief (p. 6) there is the bold unequivocal statement that respondent

> " * * * offered evidence to show and contended, in the Court of Appeals, that *there are other** selectors available for rejecting *underweight* coins, * * *."

Continuing, respondent asserts that such selectors are made by the Rowe Manufacturing Company of New Jersey, DuGrenier Company of Massachusetts and one "known as the '100', manufactured and sold at St. Louis".

These representations are untrue. They are directly contradicted by the evidence of record and admissions by respondent's counsel.

As to the alleged Rowe product respondent's witness Kuechler (R., p. 125) testified:

> "Q. Do you know of the Rowe Manufacturing Company, of Whippany, New Jersey?
> "A. Yes.
> "Q. Do you know whether that company makes coin rejectors?
> "A. *I don't know* whether they do at the present time. In the past they have.
> "Q. Those that have been made in the past, were those devices capable of rejecting a coin of proper diameter but underweight?
> "A. *I don't know.*"

The same witness testifying as to the DuGrenier product said:

> "Q. Do you know of the H. Du Grenier Corporation, of Haverhill, Massachusetts?

---

* Emphasis ours unless otherwise noted.

"A. Yes.

"Q. Do you know whether that company makes coin rejectors?

"A. *To my knowledge, not at the present time.*"

Respondent in its brief (p. 47) filed in the Court of Appeals in Appeal No. 10290-1 also said:

> "The Rowe device *was not sold to the trade,* and it is obvious that the trade did not want it."

Respondent further conveniently refrains from informing this Court that the third selector and rejector identified in its brief as the "100" model *was manufactured and sold by the respondent.* It was never manufactured and sold by a competitor. Kuechler identified this model as a product of the respondent:

> "Q. During the accounting period, on what basis was the 100 series model slug rejector sold by the plaintiff?
>
> * * * * *
>
> "A. The 100 series slug rejector *was an obsolete model, and was not offered to the trade,* but sold only in those instances where a customer required the 100 series for replacement.
>
> * * * * *
>
> "There is *not a single instance* where the 100 series slug rejectors were sold to the customer for any new development. It was either replacement, or to utilize old inventory."

In the transcript before this Court in Case No. 506 at page 238 the following testimony of respondent's witness appears:

> "Q. I call your attention to another device marked Plaintiff's Exhibit 15.* Can you identify that? If you can, please do so.

---

* This corresponds to the device identified as model "100".

"A. Yes, sir. This is a slug rejector of the 3 in 1 type, of the early hand-made models of *National Slug Rejectors, Inc.*

"Q. Was that made at your plant in St. Louis?

"A. Yes, sir.

* * * * *

"Q. Did you ever go into production on that?

"A. No, sir.

* * * * *

"Q. How did it compare with the device having the cradle type preliminary tester?

"A. Well, I turned it down, I did not let it go into production, on account it was not safe."

Patzer, petitioner's witness, also testified (R., p. 686):

"A. I recognize all exhibits before me as plaintiff's Model 100 slug rejector, which embodies the features of the Fry-Gottfried patent 2,326,211."

In the reply brief filed in the Circuit Court of Appeals, Appeal No. 9194, respondent's counsel in referring to this "100" model said:

"The structure of the Fry and Gottfried application is in evidence as Plaintiff's Exhibit 15. It was tried out in 1940 but was so ineffective as a preliminary tester it was *condemned at the factory.*"

The purpose of advancing these inaccurate and misleading representations is apparent. They are calculated to mislead the Court into the erroneous belief that there is no concentration of the industry in respondent. The Court is erroneously informed that bitter commercial competition now exists in the industry. Indeed, respondent in its brief (p. 7) erroneously says that it "does not have or will not have complete monopoly" of the entire vending machine industry under the opinion of the Court of Appeals.

No comment is required to establish the inacuracy of such contention. The evidence speaks for itself. It is self-convicting.

2. Refusal to Grant Licenses: Respondent in its brief (p. 7) states that petitioner's representation that it will not grant a license under the patent in suit to anyone is "absolutely without foundation". No evidence is cited to support this assertion. The evidence does fully establish that respondent will grant no license to anyone under the patent.

The petition (pp. 3-4) quotes the testimony of respondent's witness Kuechler. The evidence there quoted fully supports petitioner's contention that respondent will grant no license under the patent in suit, as well as the equally important contention that respondent and petitioner were the only manufacturers at the date of the judgment making and selling rejectors to reject a coin of proper diameter but underweight.

To this evidence may be added the testimony of respondent's witness Hobbs. He confirmed the facts that (1) respondent and petitioner were the only sources of manufacture of the slug rejectors and (2) respondent would not grant a license to anyone. His unequivocal testimony is:

> "9. During the accounting period herein from May 1, 1945 to September 2, 1948, the only two parties in the United States manufacturing and selling slug rejectors which would reject a coin of proper diameter but underweight were the plaintiff and the defendant in this case.
>
> * * * * *
>
> "11. No licenses have been issued by the plaintiff corporation under the Fry patent in suit, No. 2,292,628, and *the plaintiff has had no desire to do so.*"

Explicit in this testimony is the fact that unless the decision of the Court of Appeals is reversed a complete concentration of the vending machine industry will be enjoyed

by respondent. It can exact any tribute of its own dictation, no matter how burdensome and oppressive, from the entire industry which necessarily must be borne by the public. Respondent's acts to be now recited show that it intends to employ any means to accomplsh this end.

3. Respondent's Proposal For Settlement: Respondent's brief (p. 7) by implication seeks to deceive and mislead this Court into the erroneous belief that it may have offered petitioner a formal written license agreement under the patent in suit to manufacture its current models. It is said that "petitioner cannot deny" (p. 7) the offer of such a license. This challenge requires that the Court now be advised of the final, formal, written proposal of settlement respondent offered to petitioner. This proposal is found in the appendix and marked Exhibit A. It is proven by the affidavit of Patzer found in the appendix and marked Exhibit B.

The proposal is *not* a license. It has none of the attributes of a license. By the proposal respondent sought to restrain all activity in the manufacture and sale of any type of coin selector and rejector by petitioner and its officers for a period of 17 years, notwithstanding the Fry patent expires in about eight years. The proposal illegally sought a complete restraint of trade and, if accepted, would have suppressed all competition in violation of the antitrust laws. A few of the illegal drastic restrictions contained in the proposal are now referred to.

Inter alia, the proposal provided:

> " * * * transfer by a proper bill of sale and written assignments of all right, title and interest in and to the tools, dies, jigs, owned, controlled or in the possession of A.B.T. Manufacturing Corporation for the manufacture of slug rejectors, inventory, A.B.T.'s slug rejector business and good will relating thereto, the use of the name or trade-mark by which said rejector has been designated in the past, and any and all patents or patent applications owned or controlled by the A.B.T. Manufacturing Corporation * * * ."

These illegal and obnoxious provisions would have required petitioner to discontinue in its entirety the manufacture and sale of slug rejectors without regard to any type of rejector. Had it been accepted it would have given to respondent a complete or 100% dominance over the entire industry since petitioner is respondent's only competitor.

Continuing, the proposal provided:

> "* * * Walter A. Tratsch, and its President William Patzer will agree to stay out of the slug rejector business and the manufacture and/or sale of slug rejectors, either directly or indirectly, for a *period of seventeen (17) years,* in the United States, from date, * * *."

Such drastic and illegal restrictions would have destroyed respondent's sole competitor for 17 years. If accepted, it would have resulted in an illegal restraint of trade and a plain violation of the anti-trust laws. It naturally was rejected with indignation.

The final, formal and written proposal does, however, demonstrate the extent to which respondent has decided to go to maintain a complete monopoly over the vending machine industry. The end it seeks will be attained unless the decision of the Court of Appeals is reversed.

4. Prior Petition for Certiorari: On several occasions respondent asserts it is now confronted with a petition for certiorari "in the same litigation on the *same grounds*" (brief, p. 2) and that this Court has "heretofore denied certiorari on *precisely the same grounds* now urged by the same petitioner" (p. 3). These material representations of fact are false. By such glaring misrepresentations respondent seeks to mislead this Court into the belief that the present petition is based upon the identical grounds advanced in the prior petition and that petitioner here seeks merely a reconsideration of its prior petition.

The grounds relied upon in the prior petition asserted *invalidity* of claim 21 of the patent in suit and nothing else.

Infringement of claim 21 by the models *then in issue* was conceded by petitioner.

All questions presented in the present petition are directed exclusively to the *non-infringement* of certain later or current models. This petition is not directly or indirectly concerned with the validity of the claim in suit.

As plainly stated in the petition (p. 8) the questions presented are as follows:

(1) Is the decision of the Court of Appeals interpolating into claim 21 the finger 268 disclosed in the patent but unrecited in the claim to sustain a finding of infringement of current models 7000A, 7000B and 6500B in conflict with opinions of this Court?

(2) Was the Court of Appeals as a matter of law justified in ignoring, deleting and extinguishing positively recited elements of the claim to support its finding of infringement by said current models?

(3) May the scope of the claim be expanded under the doctrine of equivalents to cover devices completely lacking the asserted vitalizing and essential features of the claim?

The accused current models 7000A, 7000B and 6500B were each *non-existent* at the time the prior petition and the petition for rehearing were filed and denied. Infringement by the manufacture and sale of such models was not and could not have presented grounds upon which the prior petition was based.

The petition for rehearing and the supplemental petition in the prior proceedings were also confined exclusively to the alleged invalidity of claim 21 of the patent in suit.

Rule 33 of the Rules of the Supreme Court of the United States, as amended October 13, 1947, provided:

> "A petition for rehearing filed under this paragraph must be supported by a certificate of counsel to the effect that it is presented in good faith and not for

delay, and counsel must also certify that the petition is restricted to the grounds above specified."

The "grounds above specified" provided for under Rule 33 are intervening circumstances of substantial or controlling effect or other substantial grounds available to the petitioner although not presented in the main petition. This accounts for the statement in the opinion of this Court denying the petition for rehearing (333 U.S. 850) as not being based upon a ground substantial within the meaning of the rule as amended.

The prior petition was known to counsel prior to the filing of this petition. It was not referred to because of its apparent irrelevancy to any issue or ground now presented.

5. Public Importance: Respondent on several occasions contends that the vital questions of infringement presented by this petition are "of personal interest only to the parties here" (p. 4). This is a misstatement of law. Infringement of a patent goes far beyond the interests of the parties directly involved. The ~~public interest~~ is dominant.

Mercoid Corp. v. *Mid-Continent Inv. Co.*, 320 U.S. 661, so holds:

> "• • • It is the public interest which is dominant in the patent system. • • • It is the protection of the public in a system of free enterprise which alike nullifies a patent where any part of it is invalid • • •.
>
> • • • • •
>
> "• • • And the determination of that policy is not 'at the mercy' of the parties • • • nor dependent on the usual rules governing the settlement of private litigation. • • •"

This Court in *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, in refusing to grant relief under a patent also said:

> "• • • This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. • • •"

Precision Instrument Mfg. Co. v. *Automotive Maintenance Mach. Co.*, 324 U.S. 806, is to the same effect:

> "* * * At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing * * * that such monopolies are kept within their legitimate scope. * * *"

In *Mercoid Corp.* v. *Mid-Continent Inv. Co.* and *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Mach. Co.* certiorari to the Court of Appeals for the Seventh Circuit was granted without conflict of decision. In each instance the judgment of the Court of Appeals was reversed.

Because of the public interest involved in a patent infringement suit this Court has not been reluctant in granting certiorari without conflict of decision of Circuit Courts of Appeals where the decision complained of establishes a complete monopoly and a suppression of all competition in an important, large and growing industry and where there is no likelihood of conflict of decision (Pet., p. 2).

6. The Contempt Charges: As atmosphere and to prejudice this Court respondent in its brief (p. 5) asserts petitioner was found in contempt by the manufacture of certain models. It was *not* found to be in contempt by the manufacture of models 7000A, 7000B and 6500B. The master and the District Court held these current models did not infringe. Moreover, in respect to the intervening models the master and District Court found there was no deliberate contempt (R., p. 915). The master in his findings stated:

> "* * * I am not inclined to find from the evidence here presented that in the manufacture and sale of the new models after March 5, 1948, there was any deliberate attempt to violate the injunction."

Alleged acts of contempt were stressed by respondent in the Court of Appeals. Much was said about the contempt

action, probably to prejudice petitioner's entire case in the mind of the court. It may have improperly had the desired effect in this regard. But in view of the paramount interest of the public involved in a patent infringement suit it is respectfully suggested that it will not so affect this Court (*Mercoid Corp.* v. *Mid-Continent Inv. Co.* and *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Mach. Co., supra*). It is irrelevant to any issue presented by this petition.

7. The Hypothetical Questions Argument: It is said in the brief (p. 9) that the petition presents "three hypothetical questions". This is not true. The petition (pp. 8-9) presents three actual, definite, concrete questions based upon demonstrated erroneous findings in the decision of the Court of Appeals. The three questions presented involve the legality of the construction or interpretation which the court did actually place upon claim 21 here in suit, contrary to many decisions of this Court. These questions are succinctly stated in the petition and need not be repeated here.

8. The Improper and Unwarranted Construction of the Claim: The petition and brief do definitely establish the errors committed by the Court of Appeals in reversing the concurring opinions of the master and the District Court and in finding infringement (pp. 6-8; 16-21). To what is there said but little need here be added.

The Court of Appeals did read "the arm or finger [268] of claim 21" into the claim as an element thereof. Respondent tacitly so concedes in its brief (p. 8). It then erroneously asserts that from the context of the opinion it is clear that the court did not interpolate the element in the claim (p. 9).

It was only by reading into the claim not only the arm or finger 268 shown and described in the drawings and the specification of the patent in suit, but also its function, that the Court of Appeals concluded, contrary to the concurrent

findings of the master and the trial court, infringement of the concurrent models 7000A, 7000B and 6500B.

CONCLUSION.

Judge Oscar E. Bland, of counsel for the petitioner, died prior to the preparation of this reply. This accounts for the absence of his name on this brief.

For the reasons stated the petition should be granted.

Respectfully submitted,

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Proof of Service.

It is hereby certified that three copies of the foregoing Petitioner's Brief in Reply to Respondent's Opposition to Petition for Writ of Certiorari have this 25th day of September, 1951, been sent by regular mail to Mr. Clarence J. Loftus, 135 South LaSalle Street, Chicago 3, Illinois, attorney for respondent.

CHARLES M. THOMAS.

APPENDIX.

Exhibit A.

June 19, 1951.

As a counter-proposal, National Rejectors, Inc., suggests as full settlement of all claims for damages $315,000.00, to be paid on the basis of $165,000.00 in cash, and the balance by the transfer by a proper bill of sale and written assignments of all right, title and interest in and to the tools, dies, jigs, owned, controlled or in the possession of A. B. T. Manufacturing Corporation for the manufacture of slug rejectors, inventory, A. B. T.'s slug rejector business and good will relating thereto, the use of the name or trademark by which said rejector has been designated in the past, and any and all patents or patent applications owned or controlled by the A. B. T. Manufacturing Corporation or owned or controlled by trust under the agreement with the A. B. T. Manufacturing Corporation; with a further understanding that the Chairman of the Board of A. B. T. Manufacturing Corporation, Walter A. Tratsch, and its President William Patzer will agree to stay out of the slug rejector business and the manufacture and/or sale of slug rejectors, either directly or indirectly, for a period of seventeen (17) years, in the United States, from date, except for the coin slide business; with the further understanding that the present management of A. B. T. may remain in charge up to September 30, 1951, and continue in operation meanwhile to dispose of its present inventory on hand for the rejectors which its President indicates will be made meanwhile, approximately 18,000 of Model 6500C-1 and 12,000 Model 7000C. A. B. T. will pay a royalty of 60c per unit on Model 6500C-1, and 25c per unit on the Model 7000C on said models meanwhile made.

It is further understood that A. B. T. Manufacturing Corporation will pay the taxable court costs and Master's fees in the litigation now pending between National and A. B. T., to-wit:

National Rejectors, Inc., Plaintiff,

v.

A. B. T. Manufacturing Corporation, Defendant.

Civil Action 45C1618.

National Rejectors, Inc., Plaintiff,

v.

A. B. T. Manufacturing Corporation, Defendant.

Civil Action 744.

Both cases were filed in the United States District Court for the Northern District of Illinois, Eastern Division, and all proceedings therein before the District Court, Appellate Court and/or the Master.

If these points are acceptable, then of course, a proper contract will be drawn.

This proposal must be accepted or rejected by 5:00 P.M. today.

Exhibit B.

AFFIDAVIT OF WILLIAM PATZER.

State of Illinois }
County of Cook } ss.

William Patzer, being duly sworn, deposes and says that he is of legal age, a resident of the City of Chicago, State of Illinois, and is President of petitioner company, A. B. T. Manufacturing Corporation, and was President of that company prior to June 19, 1951.

That with Walter A. Tratsch, Chairman of the Board, of the A. B. T. Manufacturing Corporation, he attended a conference with representatives of respondent, National Rejectors, Inc., at the office of its counsel in Chicago, Illinois, on June 19, 1951.

That the attached proposal, dated June 19, 1951, and marked Exhibit A, was submitted to him and to Walter A. Tratsch during such conference and that he believes such proposal was prepared on the day of the conference by representatives of respondent, National Rejectors, Inc.

That the attached copy is a true and genuine copy of the proposal as submitted to A. B. T. Manufacturing Corporation at the time of this conference.

That this proposal is the last formal and written proposal for settlement submitted by respondent, National Rejectors, Inc., to petitioner, A. B. T. Manufacturing Corporation, to the best of his knowledge and belief.

/s/ WILLIAM PATZER

Subscribed and sworn to before me this 18th day of September, 1951.

(SEAL) /s/ ROLLO BUDDE,
Notary Public